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IN THE

Supreme Court of the United States

October Term — 1960

PETITION FOR CERTIORARI

No. 733

SOUTHERN CROSS STEAMSHIP CO., INC.
Petitioner,

v.

GEORGE FIRIPIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDIX

TEAGLE & LITTLE, PRINTERS, NORFOLK, VA.

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ORIGINAL MEMORANDUM OF THE DISTRICT COURT

Libellant, an A/B seaman employed on the S.S. MARGARITIS, was injured on April 1, 1958, while the vessel was in drydock for minor repairs at Norfolk, Virginia. The accident occurred at approximately 3 P. M. while libellant was assisting in moving an oxygen tank from a pallet or crib which had brought the tank and other shipstore supplies from the dock to the deck of the vessel. The tank, weighing about 120 pounds, required the services of at least two men to remove

from the pallet, crib or bucket, and to place in its proper location on deck to await subsequent transfer to its final destination. One Apostolos Rousketos was inside the crib and proceeded to rest the tank on the edge of the crib. Libellant was outside of the crib or wire basket and on the inboard side of the starboard dock near the No. 3 hatch. Libellant, in assisting the removal of the tank, took hold of the forward or top of the tank end, after taking a step or two, slipped and fell. According to libellant, the crew had been oiling the winches located nearby and oil had flowed upon the deck in the immediate vicinity of the crib. Libellant contends that he slipped on oil, fell forward, and the tank dropped upon his right hand resulting in serious and permanent injuries to the fifth or little finger of his right hand. Testimony presented by respondents is in contradiction to that of libellant as to the presence of oil on the deck, but it is conceded that, for some unknown cause, libelland did slip and fall.

Only the third officer (Zolotos) and the seaman in the crib (Rousketos) were produced as witnesses by respondents, although admittedly there were at least three or four other members of the crew congregated in the area. The boatswain (Mathioudis), in charge of the unloading operation, was not called as a witness and his non-availability is not explained. One seaman (Mathioudis) was no longer a member of the crew when respondents' despositions were taken approximately nine months after the accident. The chief engineer was present at the scene but was not called upon to testify in the case. Other unidentified members of the deck department were also engaged in unloading ship-stores in the vicinity of the accident.

The unexplained failure to call material witnesses raises an inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents. With one exception, the witnesses presumably were in the employ of the respondent owner at the time respondents' depositions were taken. When we consider the fact that the libel was filed approximately two weeks following the accident, and the evidence further discloses that proctors for respondents interviewed certain crew members at Norfolk about three months after the accident, we believe it to be a fair assumption that some of the other witnesses were better situated to state facts which would assist the court in determining the case of libellant's fall. The postive testimony of libellant is to the effect that the crew had previously been engaged on the day in question in oiling the winches located from six to ten feet distant from the place where libellant fell. The oiling of winches would come within the supervision of the boatswain. Even more significant it should be noted that the third officer was situated on the outboard side of the starboard deck, and that the seaman in the crib, as well as the crib or basket itself, were between the third officer and the libellant. In explanation of his testimony that no oil was upon the deck in the area in question, the third officer stated that he had noted the condition of the deck about fifteen minutesa prior thereto and, after some persuasion by proctor for respondent, he further stated that the men were working in the area and he had wanted to see that the area was clean before bringing any provisions aboard. As to the seamen in the crib, basket, or bucket, the evidence as to the absence of oil on the deck is of a negative character and, additionally, his testimony is to the effect that he was in the crib,

the sides of which slanted away from the witness, placing this witness in a not too advantageous position to describe the condition of the deck. When all of these factors are considered, along with the proper inferences to be drawn from the attitude of respondent in refusing to pay maintenance at a time when libellant had obviously not reached his maximum cure, we think it plain that libellant has carried the burden of proof in establishing that the immediate cause of his fall was due to oil upon the deck in the area.

The libellant is a citizen of Greece. Approximately one year prior to his injury libellant signed an employment contract in Piraeus, Greece, and immediately flew to Alexandria, Egypt, where he originally signed aboard the S. S. MARGARITIS on or about April 6, 1957. The vessel is owned by the respondent, Southern Cross Steamship Company, Inc., a corporation organized and existing under the laws of the Republic of Liberia, having been so formulated on December 3, 1953. At the time of the injury the corporate stock was owned by Greek citizens, with the exception of 20% of said stock which was owned by an American citizen. In January, 1959, approximately eight months after the institution of this action, the American citizen sold his stock interest to the Greek citizens. Respondent's principal office is listed as Monrovia, Liberia. Southern Cross Steamship Company, Inc., maintained no office, and employed no persons, in the Republic of Honduras, although the MARGARITIS flew the flag of that country. Operating instructions for the vessel were issued in part by the Greek citizens, and in part by the American stockholder. No operating instructions emanated from the Republic of Honduras.

The vessel never visited Honduras on any voyage. She was purchased by, and delivered to, Southern Cross Steamship Company, Inc., on January 21, 1954, at LeHavre, France.

For a period of two years prior to the accident the vessel participated in thirteen voyages; nine of which involved visits to ports in the United States. At no time did the vessel visit Greece, Liberia or Honduras.

The libel, as amended, states a cause of action under the Jones Act, 46 U. S. C. A., §688, for negligence, and further asserts a claim for unseaworthiness under general maritime law. It is further contended that wages were not paid to libellant in a port of the United States pursuant to 46 U. S. C. A. §§596, 597. A claim for maintenance and wages to the end of the voyage is likewise asserted in a separate cause of action.

We turn to a consideration of the rights to maintain this action as alleged by libellant. Respondent insists that, as to the claim for damages, libellant must resort to the law of Honduras covering compensation for accidents arising from maritime work. If this law is applicable to the facts of this case, compensation equivalent to two-thirds of libellant's weekly wage would be payable for seven weeks covering the "loss" of the little finger. Under Article 53, the rights granted to the injured maritime worker against the master or vessel are exclusive. Libellant last signed Honduran articles on March 13, 1953, at the Port of New York. The articles do not describe the voyage or voyages to be undertaken, but do include a reference to any remedy for injury as being exclusively governed by the laws of the Republic of Honduras.

That the SS MARGARITIS is a "flag of convenience" cannot be doubted. A Liberian corporation, controlled by Greek and American interests as indicated, operated a vessel under the Honduran flag, which said vessel never visited Liberia, Greece, or Honduras. The contacts are essentially in the United States with a general agent in New York. Libellant's injuries occurred while the vessel was in drydock in the United States. Accepting the most recent pronouncements on the subject as stated in *Bartholomew v. Universe Tankships, Inc.*, 2 Cir., 263 F. (2d) 437, cert. denied, 359 U. S. 1000, 79 S. Ct. 1133, 3L. Ed. (2d) 1030, we believe that the total lack of contacts with Honduras, save and except the flying of the Honduras flag, precludes us from applying the law of the flag to this case. With no suggestion or evidence tending to show that the law of any other country should be applied, we lean to the view that substantial contracts exist between the seamen and the United States, in that the tortious conduct occurred therein, libellant last signed articles at New York, and orders for the operation of the vessel emanated in part from New York where a substantial stockholder maintained his residence and place of business. We are not unmindful of the teachings in *Lauritzen v. Larsen*, 345 U. S. 571, wherein the Jones Act was held inapplicable in a case involving a Danish seaman who, while temporarily in New York, signed aboard a ship of bona fide Danish flag and registry, and was injured in the course of his employment while in the harbor of Havana. We wholeheartedly agree with *Laauritzen*, but it should be noted from the opinion of Mr. Justice Jackson that cases involving nominal foreign registrations are not intended to be governed by the same rules.

Holding that the Jones Act applies to this case, we think it clear that negligence existed in directing libellant to perform a duty at a place not reasonably safe at the time, without at least directing libellant's attention to the presence of oil on the deck. There is credible evidence to support the view that defendant's officers or crew members should, by the exercise of ordinary care, have noted the presence of oil on the deck in sufficient time to have corrected the condition. Without a more definite pronouncement on the subject, it cannot be said that this transistory condition is tantamount to unseaworthiness. Cf. *Mitchell v. Trawler Racer, Inc.*, 1 Cir., 265 F. (2d) 426, cert. granted, 361 U. S. 808, argued January 21, 1960; 28 L. W. 3227.

The injuries were serious and painful. Initially, it appeared that libellant would have a "claw" hand, but subsequent plastic surgery treatment reduced the permanent disability to approximately five per cent of the total hand, or thirty per cent of the little finger. For his pain, suffering inconvenience, loss of wages, and permanent injury libellant is entitled to an award of $3300.00, which will be diminished by fifteen per cent for contributory negligence in failing to maintani a proper lookout for his own safety.

Libellant was confined to the United States Public Health Service Hospital at Norfolk from April 1, 1958, to May 15, 1958, and respondent paid maintenance at the rate of $6.50 per day until June 14, 1958, at which time payments were stopped. Undemiably, libellant did not reach the point of maximum cure until October 16, 1958. Eliminating the days that libellant was confined to the Norfolk General Hos-

pital for two plastic surgery operations, respondent is obligated to pay maintenance at the rate of $6.50 per day, plus interest on the delinquent payments at the rate of six per centum per annum computed on a weekly basis. It is well settled that where maintenance payments are due and unpaid without cause, interest is properly chargeable on such payments. *Medina v. Erickson*, 2 Cir., 226 F. (2d) 475. The total payments due, including interest computed in the date of final argument on January 12, 1960, aggregate $754.49, as per stipulation of counsel. Respondent has now paid all items for medical and hospital treatment.

The claim for wages and waiting time presents a rather unique situation from the state of the evidence. The uncontradicted testimony is to the effect that a new master took charge of the vessel in Germany immediately prior to the vessel's departure for Norfolk, and that the crew was not paid their wages in full while in Germany. This is supported not only by libellant's testimony, but also by a copy of a wage account submitted by the new master to libellant while "at sea" on March 13, 1958. The wage account covers the period from August 13, 1957, to March 13, 1958. It was partially prepared in typewritten form but manifestly other writings and figures were thereafter placed upon the account in pencil. As one item listed as an advance reveals £22-10-6 paid at Hamburg and Bremen, and another item shows a payment of £50 on March 8, 1958, for "Home to Greece," we must assume that these items, shown in pencil, were added to the account after the typewritten account was initially prepared.

Respondent, relying upon the language of the wage account, urges that it discloses on its face that

libellant was paid in full while "at sea" on March 13, 1958. The wage account reveals that, on that date, there was due to libellant the sum of £ 28 - 19 - 3. Libellant, at the time of his deposition on August 21, 1958, positively stated that he never received this money and that it was then due and owing. While the copy of the wage account indicates some writing in pencil at the bottom of the page, it cannot be said that this is the libellant's signature. Indeed, for some unknown reason, libellant was never even questioned as to whether he had received the money or signed his name indicating receipt of same. Presumably the original wage account is in the possession of respondent, but has never been produced. Such document, if produced, should readily reveal whether libellant's signature appears thereon. Respondent submitted no evidence as to libellant's claim for £ 28 - 19 - 3, due and unpaid on March 13, 1958, and payable on April 2, 1958, at Norfolk when the vessel departed, with libellant remaining in the hospital. As a demand for wages was made by libellant, he was entitled to this sum on April 2, 1958, and respondent advances no reason why the wages have never been paid.

Respondent's agent, Hasler and Company, paid libellant the sum of $53.54 at the U. S. Public Health Service Hospital on April 2, 1958. The receipt of this sum is admitted by libellant, and a receipt was apparently signed by libellant (by printing his name in English). The receipt, written in English, states: "Wages due up to and including April 1st, 1958, for Wage Account Attached." Respondent's agent did not produce the attached wage account and admittedly did not deliver a copy to libellant; the original having been

forwarded to the owner's agents in New York for the purpose of securing reimbursement for this expenditure. The local agent does not state that the receipt was either read or explained to libellant, and as libellant is a Greek, testifying through an interpreter, it is improbable that he knew the contents of the paper he signed. Libellant stated that he knew he had wages due him which had accrued since the wage account dated March 13, 1958, had been submitted to him, and respondent's agent testified that the sum of $53.54 covered approximately seventeen days' wages. The signing of the receipt dated April 2, 1958, affords no defense to respondent if, in fact, the wages due on March 13, 1958, remain unpaid.

Respondent's actions on the wage controversy are indeed strange. The production of a receipt for wages due on March 13, 1958, bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid "at sea" on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance; but to rely merely upon a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisions. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958, plus the amount actually due.

Libellant's claim against Hasler and Company is dismissed. There is nothing that this local lumsbanding agent did, or failed to do, which supports any contention of legal liability. The decree will be against the vessel *in rem* and the respondent, Southern Cross Steamship Co., Inc., *in personam*. Adopting this memorandum as the Court's findings of fact and conclusions of law, pursuant to General Admiralty Rule 46-½, proctors for libellants will prepare and present, after inspection by proctors for respondents, an appropriate decree.

Norfolk, Virginia

* * * *

CORRECTED MEMORANDUM OF THE DISTRICT COURT

Libellant ,an A/B seaman employed on the S. S. Margaritis, was injured on April 1, 1958, while the vessel was in drydock for minor repairs at Norfolk, Virginia. The accident occurred at approximately 3 P.M. while libellant was assisting in moving an oxygen tank from a pallet or crib which had brought the tank and other shipstore supplies from the dock to the deck of the vessel. The tank, weighing about 120 pounds, required the services of at least two men to remove from the pallet, crib or bucket, and to place in its proper location on deck to await subsequent transfer to its final destination. One Apostolos Rousketos was inside the crib and proceeded to rest the tank on the edge of the crib. Libellant was outside of the crib or wire basket and on the inboard side of the starboard deck near the No. 3 hatch. Libellant, in assisting the removal of the tank took hold of the forward or top of the tank and, after taking a step or two, slipped and fell. According to libellant, the crew had been oiling the winches located nearby and oil had flowed upon the deck in the immediate vicinity of the crib. Libellant contends that he slipped on oil, fell forward, and the tank dropped upon his right hand resulting in serious and permanent injuries to the fifth or little finger of his right hand. Testimony presented by respondents is in contradiction to that of libellant as to the presence of oil on the deck, but it is conceded that, for some unknown cause, libellant did slip and fall.

Only the third officer (Zolotos) and the seaman in the crib (Rousketos) were produced as witnesses by respondents, although admittedly there were at

least three or four other members of the crew congregated in the area. The boatswain (Mathioudis), in charge of the unloading operation, was not called as a witness although the file reflects that libellant endeavored unsuccessfully to take the deposition of the boatswain and another witness on February 9, 1959, at New York; the notice to take depositions referring to these individuals as "former crew members." One seaman (Kostantinidas) was no longer a member of the crew when respondents' depositions were taken approximately nine months after the accident. The chief engineer was present at the scene but was not called upon to testify in the case. Other unidentified members of the deck department were also engaged in unloading shipstores in the vicinity of the accident.

The unexplained failure to call material witnesses raises a inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents. With the exceptions, as noted, the witnesses presumably were in the employ of the respondent owner at the time respondents' depositions were taken. When we consider the fact that the libel was filed approximately two weeks following the accident, and the evidence further discloses that proctors for respondents interviewed certain crew members at Norfolk about three months after the accident, we believe it to be a fair assumption that some of the other witnesses were better situated to state facts which would assist the Court in determining the cause of libellant's fall. The positive testimony of libellant is to the effect that the crew had previously been engaged on the day in question in oiling the winches located from six to ten feet distant from the place where libellant fell. The

oiling of winches would come within the supervision of the boatswain. Even more significant it should be noted that the third officer was situated on the outboard side of the starboard deck, and that the seaman in the crib, as well as the crib or basket itself, were between the third officer and the libellant. In explanation of his testimony that no oil was upon the deck in the area in question ,the third officer stated that he had noted the condition of the deck about fifteen minutes prior thereto and, after some persuasion by proctor for respondent, he further stated that men were working in the area and he had wanted to see that the area was clean before bringing any provisions aboard. As to the seaman in the crib, basket, or bucket, the evidence as to the absence of oil on the deck is of a negative character and, additionally, his testimony is to the effect that he was in the crib, the sides of which slanted away from the witness, placing this witness in a not too advantageous position to describe the condition of the deck. When all of these factors are considered, along with the proper inferences to be drawn from the attitude of respondent in refusing to pay maintenance at a time when libellant had obviously not reached his maximum cure, we think it plain that libellant has carried the burden of proof in establishing that the immediate cause of his fall was due to oil upon the deck in the area.

The libellant is a citizen of Greece. Approximately one year prior to his injury libellant signed an employment contract in Piraeus, Greece, and immediately flew to Alexandria, Egypt, where he originally signed aboard the S. S. Margaritis on or about April 6, 1957. The vessel is owned by the respondent, Southern Cross

Steamship Company, Inc. a corporation organized and existing under the laws of the Republic of Liberia, having been so formulated on December 3, 1953. At the time of the injury the corporate stock was owned by Greek citizens, with the exception of 20% of said stock which was owned by an American citizen. In January, 1959, approximately eight months after the institution of this action, the American citizen sold his stock interest to the Greek citizens. Respondent's principal office is listed as Monrovia, Liberia. Southern Cross Steamship Company, Inc., maintained no office, and employed no persons, in the Republic of Honduras, although the Margaritis flew the flag of that country. Operating instructions for the vessel were issued in part by the Greek citizens, and in part by the American stockholder. No operating instructions emanated from the Republic of Honduras. The vessel never visited Honduras on any voyage. She was purchased by, and delivered to, Southern Cross Steamship Company, Inc., on January 21, 1954, at LeHarve, France.

For a period of two years prior to the accident the vessel participated in thirteen voyages; nine of which involved visits to ports in the United States. At no time did the vessel visit Greece, Liberia or Honduras.

The libel, as amended, states a cause of action under the Jones Act, 46 U. S. C.A. § 688, for negligence, and further asserts a claim for unseaworthiness under general maritime law. It is further contended that wages were not paid to libellant in a port of the United States pursuant to 46 U.S.C.A. §§ 596, 597. A claim for maintenance nad wages to the end of the voyage is likewise asserted in a separate cause of action.

We turn to a consideration of the right to maintain this action as alleged by libellant. Respondent insists that, as to the claim for damages, libellant must resort to the law of Honduras covering compensation for accidents arising from maritime work. If this law is applicable to the facts of this case, compensation equivalent to two-thirds of libellant's weekly wage would be payable for seven weeks covering the "loss" of the little finger. Under Article 53, the rights granted to the injured maritime worker against the master or vessel are exclusive. Libellant last signed Honduran articles on March 13, 1958, apparently at Bremen, Germany, which said articles were not validated until the vessel reached New York. The articles do not describe the voyage or voyages to be undertaken, but do include a reference to any remedy for injury as being exclusively governed by the laws of the Republic of Honduras.

That the S. S. Margaritis is a "flag off convenience" cannot be doubted. A Liberian corporation, controlled by Greek and American interests as indicated, operated a vessel under the Honduran flag, which said vessel never visited Liberia, Greece, or Honduras. The contacts are essentially in the United States with a general agent in New York. Libellant's injuries occurred while the vessel was in drydock in the United States. Accepting the most recent pronouncements on the subject as stated in Bartholomew v. Universe Tankships, Inc., 2 Cir., 263 F.2d 437, certiorari denied 359 U.S. 1000, 79 S.Ct. 1138, 3 L.Ed.2d 1030, we believe that the total lack of contacts with Honduras, save and except the flying of the Honduran flag, precludes us from applying the law of the flag to this case. With no

suggestion or evidence tending to show that the law of any other country should be applied, we lean to the view that substantial contacts exist between the seaman and the United States, in that the tortious conduct occurred therein, the articles were validated at New York, and orders for the operation of the vessel emanated in part from New York where a substantial stockholder maintained his residence and place of business. We are not unmindful of the teachings in Lauritzen v. Larsen, 345 U.S. 571, 73 S.Ct. 921, 97 L.Ed. 1254, wherein the Jones Act was held inapplicable in a case involving a Danish seaman who, while temporarily in New York, signed aboard a ship of bona fide Danish flag and registry, and was injured in the course of his employment while in the harbor of Havana. We wholeheartedly agree with Lauritzen, but it should be noted from the opinion of Mr. Justice Jackson that cases involving nominal foreign-registration are not intended to be governed by the same rules.

Holding that the Jones Act applies to this case, we think it clear that negligence existed in directing libellant to perform a duty at a place not reasonably safe at the time, without at least directing libellant's attention to the presence of oil on the deck. There is credible evidence to support the view that defendant's officers or crew members should, by the exercise of ordinary care, have noted the presence of oil on the deck in sufficient time to have corrected the condition. Without a more definitive pronouncement on the subject, it canont be said that this transistory condition is tantamount to unseaworthiness. Cf. Mitchell v. Trawler Racer, Inc., 1 Cir., 265 F.2d 426, certiorari granted 361 U.S. 808, 80 S.Ct. 70, 4 L.Ed.2d 57, argued January 21, 1960, 80 S.Ct. —.

The injuries were serious and painful. Initially, it appeared that libellant would have a "claw" hand, but subsequent plastic surgery treatment reduced the permanent disability to approximately five per cent of the total hand, or thirty per cent of the little finger. For his pain, suffering, inconvenience, loss of wages, and permanent injury libellant is entitled to an award of $3,500, which will be diminished by fifteen per cent for contributory negligence in failing to maintain a proper lookout for his own safety.

Libellant was confined to the United States Public Health Service Hospital at Norfolk from April 1, 1958, to May 15, 1958, and respondent paid maintenance at the rate of $6.50 per day until June 14, 1958, at which time payments were stopped. Undeniably, libellant did not reach the point of maximum cure until October 16, 1958. Eliminating the days that libellant was confined to the Norfolk General Hospital for two plastic surgery operations, respondent is obligated to pay maintenance at the rate of $6.50 per day, plus interest on the delinquent payments at the rate of six per centum per annum computed on a weekly basis. It is well settled that where maintenance payments are due and unpaid without cause, interest is properly chargeable on such payments. Medina v. Erickson, 9 Cir., 226 F.2d 475. The total payments due, including interest computed to the date of final argument on January 12, 1960, aggregate $754.49, as per stipulation of counsel. Respondent has now paid all items for medical and hospital treatment.

The claim for wages and waiting time presents a rather unique situation from the state of the evidence. The uncontradicted testimony is to the effect that a new

master took charge of the vessel in Germany immediately prior to the vessel's departure for Norfolk, and that the crew was not paid their wages in full while in Germany. This is supported not only by libellant's testimony, but also by a copy of a wage account submitted by the new master to libellant while "at sea" on March 13, 1958. The wage account covers the period from August 13, 1957, to March 13, 1958. It was partially prepared in typewritten form but manifestly other writings and figures were thereafter placed upon the account in pencil. As one item listed as an advance reveals £22-10-6 paid at Hamburg and Bremen, and another item shows a payment of £50 on March 8, 1958, for "Home to Greece", we must assume that these items, shown in pencil, were added to the account after the typewritten account was initially prepared.

Respondent, relying upon the language of the wage account, urges that it discloses on its face that libellant was paid in full while "at sea" on March 13, 1958. The wage account reveals that, on that date, there was due to libellant the sum of £28-19-3. Libellant, at the time of his deposition on August 21, 1958, positively stated that he never received his money and that it was then due and owing. While the copy of the wage account indicates some writing in pencil at the bottom of the page, it cannot be said that this is the libellant's signature. Indeed, for some unknown reason, libellant was never even questioned as to whether he had received the money or signed his name indicating receipt of same. Presumably the original wage account is in the possession of respondent, but has never been produced. Such document, if produced, should readily reveal whether libellant's signature appears thereon. Respondent sub-

mitted no evidence as to libellant's claim for £28-19-3, due and unpaid on March 13, 1958, and payable on April 2, 1958, at Norfolk when the vessel departed, with libellant remaining in the hospital. As a demand for wages was made by libellant, he was entitled to this sum on April 2, 1958, and respondent advances no reason why the wages have never been paid.

Respondent's agent, Hasler and Company, paid libellant the sum of $53.54 at the U. S. Public Health Service Hospital on April 2, 1958. The receipt of this sum is admitted by libellant, and a receipt was apparently signed by libellant (by printing his name in English). The receipt, written in English, states: "Wages due up to and including April 1st, 1958, for Wage Account Attached". Respondent's agent did not produce the attached wage account and admittedly did not deliver a copy to libellant; the original having been forwarded to the owner's agents in New York for the purpose of securing reimbursement for this expenditure. The local agent does not state that the receipt was either read or explained to libellant, and as libellant is a Greek, testifying through an interpreter, it is improbable that he knew the contents of the paper he signed. Libellant stated that he knew he had wages due him which had accrued since the wage account dated March 13, 1958, had been submitted to him, and respondent's agent testified that the sum of $53.54 covered approximately seventeen days' wages. The signing of the receipt dated April 2, 1958, affords no defense to respondent if, in fact, the wages due on March 13, 1958, remain unpaid.

Respondent's actions on the wage controversy are indeed strange. The production of a receipt

for wages due on March 13, 1958 bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid "at sea" on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance; but to rely merely upon a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisons. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958, plus the amount actually due.

Libellant's claim against Hasler and Company is dismissed. There is nothing that this local husbanding agent did, or failed to do, which supports any contention of legal liability. The decree will be against the vessel *in rem* and the respondent, Southern Cross Steamship Co., Inc., *in personam*. Adopting this memorandum as the Court's findings of fact and conclusions of law, pursuant to General Admiralty Rule 46½, 28 U.S.C.A., proctors for libellants will prepare and present, after inspection by proctors for respondents, an appropriate decree.

FINAL JUDGMENT ORDER

This cause having been heretofore heard by the Court on the depositions de bene esse of the parties and testimony taken in open Court and thereafter upon argument of counsel, and the Court having given careful consideration thereto filing its written Opinion on February 8, 1960, in accordance with said Opinion and further adopting said Memorandum and Opinion as the Court's findings of fact and conclusions of law pursuant to General Admiralty Rule 46½.

It is ADJUDGED, ORDERED and DECREED that the libellant, Georgios Firipis, do recover of the SS MARGARITIS, her boats, etc., in rem and Southern Cross Steamship Company, Inc., in personam the sum of Three Thousand, Five Hundred ($3,500.00) Dollars, for libellant's pain, suffering, inconvenience, loss of wages, and permanent injury, said sum however shall be diminished by fifteen per cent (15%) for contributory negligence of libellant leaving a recovery for the items mentioned in the net sum of Two Thousand, Nine Hundred, Seventy-five ($2,975.00) Dollars.

In addition to the above sum if is further ORDERED that libellant do recover of the respondents the sum of Seven Hundred, Fifty-four Dollars and Forty-nine Cents ($754.79) for unpaid maintenance.

In addition to the above two sums it is ORDERED that libellant do further recover of the respondents the dollar equivalent of his earned wages due at the time he separated from said vessel the same being Eighty-one Dollars and Twenty-five Cents ($81.25). And in addition to said earned wages it is further ORDERED that libellant do recover of the

respondents double his daily wage for violation of Title 46, U. S. C. A., Sections 596, 597, from August 22, 1958, through such time in the future as the same is unpaid, computing the said daily wage rate on the basis of the dollar equivalent of thirty two pounds monthly, libellant's monthly wage, and at the official present rate of exchange between pound and dollar the same being $2.80 for each pound, 14c for each shilling and one penny for each threepence.

Judgment is therefore entered in favor of libellant, Georgios Firipis, against the respondents SS MARGARITIS, her boats, etc., in rem and Southern Cross Steamship Company, Inc., in personam, in the sum of Three Thousand, Seven Hundred, Twenty-nine Dollars and Forty-nine Cents ($3,729.49) plus a sum which will equal double libellant's daily rate of pay from August 22, 1958, until paid, but if the said respondents pay the full amount of such penalties and interest to the Clerk of this Court, such penalties and interest shall thereupon stop.

To all of which action of the Court the respondents duly objected and expected to.

s/ Walter E. Hoffman
United States District Judge

Norfolk, Virginia
February 22, 1960

We Ask For This Order:
s/ Sidney H. Kelsey

Of Proctors for Libellant
Seen, Objected and Expected To:
s/ Walter B. Martin, Jr.

Vandeventer, Black & Meredith, Proctors
for Respondents

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8099.

Southern Cross Steamship Co., Inc.,
Appellant,

versus

Georgios Firipis,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
WALTER E. HOFFMAN, DISTRICT JUDGE.

(Argued September 27, 1960. Decided December 28, 1960.)

Before SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Walter B. Martin, Jr., (Vandeventer, Black, Meredith & Martin on brief) for Appellant, and Sidney H. Kelsey for Appellee.

SOBELOFF, Chief Judge:

Important questions concerning the applicability of the Jones Act, 46 U.S.C.A. §688, and liability for double wages under 46 U.S.C.A. §596, are presented in this appeal by a shipowner from a decree in favor of a seaman for earned wages, double wages, maintenance, and damages for personal injuries resulting from negligence.

George Firipis, an able bodied seaman, was injured on April 1, 1958, while on board the Steamship MARGARITIS which was then in drydock in Norfolk, Virginia. In April, 1957, Firipis had signed an employment contract in Greece to serve upon the MARGARITIS for one year and joined the vessel in Alexandria, Egypt. On March 13, 1958, the ship left Bremen, Germany, bound for the United States and arrived in Norfolk on April 1, when it immediately went into drydock. Later that day, Firipis was assisting in moving an oxygen cylinder when he fell and injured his hand. He testified, and the District Court so found, that he slipped on oil on the deck. He was then discharged from the ship and taken immediately to the United States Public Health Service Hospital at Norfolk, where he remained until May 15, 1958. The day after his injury, on April 2, 1958, he was paid his wages for the period from March 13, 1958, to April 1, 1958, and signed a receipt for these.

On April 14, 1958, Firipis filed a libel against the ship and against her owner, Southern Cross Steamship Company, Inc., in the United States District Court for the Eastern District of Virginia, claiming damages for personal injuries under the Jones Act, maintenance, wages and double wages for waiting time.

On February 8, 1960, the District Court rendered judgment in favor of the libellant, Firipis, 181 F. Supp. 48. The court held that the Jones Act was applicable and that, under the circumstances of the case, the presence of oil constituted negligence, entitling the libellant to $3500 damages diminished by fifteen per cent for contributory negligence. The court also found that wages were not paid for a period of time prior to March 13, 1958, and awarded Firipis such wages plus the statutory double wages for non-payment without sufficient cause. Additionally, the court granted Firipis $754.79 for unpaid maintenance. On this appeal, the shipowner contests everything except the award for maintenance.

I. *Applicability of the Jones Act*

The MARGARITIS, an American built liberty ship, flew the flag of the Republic of Honduras and the articles executed by the libellant were Honduran, stating that in the case of accident, Honduran law should be applied. The shipowner insists that the law of the flag, which was proven below,[1] should control, and therefore the District Court committed error in holding the Jones Act applicable.

The leading case dealing with the applicability of the Jones Act where there are contacts with more than one nation is *Lauritzen* v. *Larsen*, 345 U.S. 571 (1953). There, the Supreme Court discussed seven factors to be considered in determining the proper choice of law: (1) the place of the wrongful act, (2) the law of the flag, (3) the allegiance

[1] Under Honduran law, for the particular injury here, the libellant would receive compensation equivalent to two-thirds of his weekly wage for seven weeks.

or domicile of the injured seaman, (4) the allegiance of the shipowner, (5) the place of contract, (6) inaccessibility of a foreign forum, (7) the law of the forum. It is clear from the Court's opinion that very little weight is to be given the last three, and we will not discuss them further except to note that the articles covering the trip from Bremen to Norfolk were signed on the high seas and validated in New York, and that there is no problem about the accessibility of a foreign forum, as the libellant could have his claim adjudicated by the Hondurian Consul in Norfolk.

Among the various factors set forth in *Lauritzen*, the most important is the law of the flag. It was there said that "the weight given to the ensign overbears most other connecting events in determining applicable law." 345 U.S. at page 585. See also *Romero* v. *International Term. Co.*, 358 U.S. 354, 381 et. seq. (1959). However, if the law of the flag is to control, the flag must not be one of convenience merely but bona fide. Justice Jackson pointed out in *Lauritzen*, 345 U.S. at page 587:

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them."

Many cases, both before and after *Lauritzen*, have refused to enforce such nominal foreign registration by disregarding flags of convenience. *Gerradin* v. *United Fruit Co.*, 60

F.2d 927 (2nd Cir., 1932); *Carroll* v. *United States*, 133 F.2d 690 (2nd Cir., 1943); *Bartholomeze* v. *Universe Tankships, Inc.*, 263 F.2d 437 (2nd Cir., 1959); *Zielinski* v. *Empresa Hondurena De Vapores*, 113 F. Supp. 93 (S.D. N.Y., 1953).[2] Turning to the present case, the only contacts the MARGARITIS had with Honduras were the flag and articles. The ship was owned by a Liberian corporation, all of whose stock was owned by Greek and American citizens. The orders directing the movements of the vessel came partly from the American and partly from the Greek owners. The members of the crew were residents of Greece, except for two residents of the United States. The injury occurred in an American port. In fact, the vessel had never, in any of its voyages, visited a Honduran port. We cannot, confronted with such an absence of any significant contacts with Honduras, uphold the shipowner's contention

[2] Moreover, even in situations where the flag was not shown to be merely one of convenience, other considerations have been held to justify the application of the Jones Act to ships of foreign registry. The Supreme Court in the *Lauritzen* case held that the law of the flag was the most important element, not that it was always the controlling element, and the Court recognized that heavy countervailing considerations might override it. In *Uravic* v. *Jarka Co.*, 282 U.S. 234 (1931), the Court, in an opinion by Mr. Justice Holmes, held that where the seaman was an American and the injury occurred in an American port, the seaman could sue under the Jones Act even though the ship was German. On the other hand, *Romero* v. *International Term. Co.*, 358 U.S. 354 (1959), held that the mere fact that the injury happened while the ship was in American waters was not standing alone, sufficient for the application of American law. For other cases holding the Jones Act applicable where the injuries occurred on foreign ships, see: *Gambera* v. *Bergoty*, 132 F.2d 414 (2nd Cir., 1942); *Kyriakos* v. *Goulandris*, 151 F.2d 132 (2nd Cir., 1945); *cf.*, *The Paula*, 91 F.2d 1001 (2nd Cir., 1937); *O'Neill* v. *Cunard White Star*, 160 F.2d 446 (2nd Cir., 1947). In discussing these Second Circuit cases and others, the Supreme Court in *Lauritzen* observed: "No two of these cases present exactly the same basis for application of American law and their contrary results do not necessarily mean inconsistency. But they illustrate different considerations which influence choice of law in maritime tort cases." 345 U.S. at page 574, note 3.

that Honduran law should have been applied. The flag was nothing more than illusory.

One further facet of this problem merits discussion. The record in this case reveals that the significant contacts were with two countries, the United States and Greece. However, neither side, either in the District Court or in this court, suggested that Greek law should have been applied, nor introduced below any evidence of what the Greek law was. Under such circumstances, the question arises whether this court should on its own initiative examine the record to determine if sufficient contacts with the United States existed to permit a Jones Act suit, or whether, in the alternative, the case should be remanded for proof and application of Greek law.[3] However, we do not have to decide whether it would be appropriate for this court to remand for the application of a country's law neither contended for nor proven, for we conclude that the District Court was not clearly in error in holding that the contacts with the United States were substantial enough to warrant applying the Jones Act.

The only evidence offered by the shipowner relevant to the applicability of the Jones Act consisted of answers to certain interrogatories propounded by the libellant, and the testimony of Riley M. Gregory, a partner in Hasler & Company, the shipowner's Norfolk agent. In the interrogatories, the shipowner, Southern Cross Steamship Company, was asked to state the names, addresses and citizen-

[3] In *Lauritzen v. Larsen*, *supra*, although the injury happened in Cuban waters, the two parties argued for the application of American and Danish law, respectively. The Court, in discussing the weight to be given to the place of the injury, observed that they need not decide the point, as neither party urged that Cuban law was controlling.

ship of all stockholders or persons holding an interest in the company. The shipowner answered that at the time of the injury, 20% of the corporate stock was owned by an American, Mr. Stephen Perry, residing in New York, and 80% of the stock was owned by Greek citizens. Although the answers gave the name and address of the American owner, the names and addresses of the Greek owners were not given even though expressly asked for. In response to a question about who gave the operating instructions for the MARGARITIS, the shipowner stated that such orders were given by both the Greek owners and the American owner. The shipowner was also asked to list the voyages of the MARGARITIS for a period of two years prior to the injury. The answer listed thirteen voyages of which nine were either to or from United States ports. None of the voyages listed were to or from Greek, Liberian, or Honduran ports. The answers to the interrogatories were signed in New York by the President of Southern Cross Steamship Company, Stamatios Perivolaris, presumably one of the Greek owners. This fact, plus the refusal to give the names and addresses of the Greek owners, lends some support to the libellant's contention that some, at least, of the Greek owners were actually residents of the United States and that the ship was really controlled from New York.

The evidence given by Mr. Gregory, a partner in the firm acting as the shipowner's Norfolk agent, was the only other evidence offered by the shipowner on this question. Mr. Gregory's testimony supports the view that the vessel was controlled from New York. He testified that, as far as he knew, the Southern Cross Steamship Company was a New York corporation located at No. 1 Broadway in New York City. He was asked what was the connection between Southern Cross and the Eastern Steamship

Agency, Inc., located at the same address, and he replied that he did not know. It is asserted by the shipowner that Eastern Steamship was just the general agent of Southern Cross. However, Gregory testified further that as far as Hasler & Company was concerned, Eastern Steamship Agency controlled the vessel and directed its operations. Eastern Steamship Agency had reimbursed the Norfolk agent for all of the bills in connection with the ship and with the libellant's injury in Norfolk. It is also noteworthy that the cable address of Eastern Steamship is "Perivolari, New York," which is essentially the same as the name of the President of Southern Cross, the owner of the ship.

The above facts, although meagre, are not disputed. They do indicate that the effective control of the vessel was by American interests. This, coupled with the fact that the injury occurred while the ship was in drydock in an American port and with the ship's Honduran registration being illusory, is sufficient under the doctrine of *Lauritzen* v. *Larsen*, *supra*, for the application of the Jones Act. In *Bartholomew* v. *Universe Tankships, Inc.*, 263 F.2d 437, 440 (2nd Cir., 1959), the court, after reviewing the many cases in this area, said:

> "It is apparent then that the contacts considered most vital in one case are not necessarily of controlling importance in another.
>
> "Hence it must be said that in a particular case something between minimal and preponderant contacts is necessary if the Jones Act is to be applied. Thus we conclude that the test is that 'substantial' contacts are necessary."

In the instant case, the District Court was not in error in finding that substantial contacts existed with the United States, warranting the invocation of American law.

II. *Liability For Double Wages*

With regard to the libellant's claim for double wages under 46 U.S.C.A. §596,[4] the District Court found, upon uncontradicted testimony, that when the new master took charge in Germany prior to the vessel's departure for Norfolk, the crew had not been paid their full wages due at that time. The ship left Germany on March 13, 1958, and later that day, evidently while at sea, a copy of a wage account was given to Firipis by the new master. That account reveals that there was then due him over 28 pounds in wages. Firipis testified that he had never received this money, and there is nothing on the copy of the wage account indicating that he did receive it. As the District Judge observed, the original wage account presumably was in the possession of the respondent, but it has never

[4] The statute provides:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

been produced, nor has any receipt ever been produced for the wages due on March 13, 1958. Moreover, no testimony or other evidence was presented by the shipowner indicating that these wages were ever paid.

After his injury, the libellant made a demand for wages and was paid $53.54 on April 2, 1958, at the United States Public Health Service Hospital by Hasler & Company, the respondent's Norfolk agent. This sum covered his wages from March 13, 1958, to April 1, 1958. Unpaid wages were claimed by Firipis when his libel was filed on April 14, and the claim for wages up to March 13, was repeated in his deposition on August 21, 1958. The District Judge stated:

> "Respondents actions on the wage controversy are indeed strange. The production of a receipt for wages due on March 13, 1958 bearing libellant's signature, would put an end to this disputed issue of fact. If the wages were in fact paid 'at sea' on that date, the original receipt must still be available. Even the testimony of the master, or other officer paying the wages to the crew, would have been of some assistance, but to rely merely on a wage account bearing no identifiable signature or name affords no defense. The respondent owner has violated the statutes of the United States and is properly subjected to the waiting time provisions. Giving the shipowner the benefit of a doubt in erroneously assuming that the wages had been paid in full on April 2, 1958, there remains no excuse for this continued assumption after the libellant testified on August 21, 1958. Until these wages are paid in full, respondent shall be liable under the waiting time statute for each day since August 22, 1958 plus the amount actually due."

Although the District Court seemed to have found that the failure to pay wages on April 2 was not justified, it did not assess double wages until after August 21. What prompted giving the shipowner this amelioration is not entirely clear.

The shipowner argues that either the District Judge must award penalties for non-payment of wages from the end of the 24-hour period after the cargo has been discharged, or within four days after the seaman has been discharged, or no penalties at all may be awarded. It is asserted that by not imposing penalties from April 2, 1958, but having them run rather from August 22, the District Court found that the failure to pay wages when due was with sufficient cause and that under the statute such failure cannot at some later date become inexcusable. It should be noted at the outset that the shipowner's argument is based upon a false premise. The District Court did not find that the failure to pay wages in April, 1958, was justified. In fact, the District Judge's opinion plainly enough indicates that the retention was without sufficient cause. What the District Judge did was, in the exercise of his discretion, to give the shipowner the benefit of any doubt and relieve him of the double wage obligation for a portion of the period. It would seem that the shipowner has no cause to complain of this, and the seaman does not appeal from such action.

The shipowner's reliance is upon *McCrea* v. *United States*, 294 U.S. 23 (1935), reargument denied 294 U.S. 382 (1935). There, the libellant, a seaman on the S.S. AMERICAN SHIPPER, demanded, when the ship was in a foreign port, that he be given his discharge and the wages due him. He cited to the master certain statutes

dealing with the failures to make proper division of the crew into watches and with the duty of American Consuls in foreign ports to inquire into claims by seamen that they are entitled to their discharge because of the unseaworthiness of the vessel etc. The master asked the seaman to meet him at the American Consul's office the next day. When the seaman arrived at the Consulate, he was informed that he was not entitled to discharge, and left before the master arrived. The master did not see the libellant afterwards, and the following day the libellant left the ship without ever again returning. Suit was later filed for wages due and double wages for waiting time. The District Court held that the seaman had been entitled to his discharge and wages, that the master however had sufficient cause to withhold them when the demand was made, but that the seaman later became entitled to double wages for the number of days of retention after suit was brought.

The Supreme Court assumed for argument's sake only that the seaman had been entitled to his wages and that the master's only valid excuse for non-payment was that the seaman did not contact him after the initial demand. The Court held that under such circumstances, the seaman was not entitled to double wages for the period following initiation of the suit. The Court stated with respect to the statute, 294 U.S. at pages 31-32:

> "Petitioner seeks, by a more liberal interpretation of the words, to impose the liability for such delay in payment, without sufficient cause, as may occur at any time *after an excusable failure to pay within the prescribed period*. This possibility is precluded by the further provision of the section that double wages shall be paid for each day during which payment is

delayed beyond the respective periods within which the payment is to be made. Thus, liability for double wages accrues, if at all, from the end of the period within which payment should have been made. It must be determined by the happening of an event within the period, failure to pay wages without sufficient cause. The statute affords a definite and reasonable procedure by which the seaman may establish his right to recover double pay where his wages are unreasonably withheld. *But it affords no basis for recovery if, by his own conduct, he precludes compliance with it by the master or owner. He cannot afterward impose the liability by the mere expedient of bringing suit upon it.*" (Emphasis supplied).

See also *The A. J. Baker*, 76 F.2d 871, (6th Cir., 1935) as previously mentioned, in the present case, contrary to *McCrea*, there was no finding of excuse or justification within the period during which wages should have been paid. Moreover, even if there had been facts indicating some justification for withholding wages for a time, there is no suggestion that any conduct of the seaman contributed to the delay.

With regard to liability for double pay, a doctrine had developed before the *McCrea* case, and has continued to the present time, that the District Court has a measure of discretion through the application of equitable principles in determining the number of days for which double wages should be assessed. *McCrea* did not purport to overrule this line of cases. In spite of the statutory language appearing to require the assessment for every day that payment is wrongfully withheld until actual payment, the Supreme Court in *Pacific Mail S.S. Co.* v. *Schmidt*, 241 U.S. 245 (1916),

held that, because of the particular circumstances of that case, penalties should stop at the time of the District Court's decree and not run during the pendency of the appeal. Other cases have likewise held that where payment is withheld without cause, double wages need not always be allowed for every day until actual payment, but in appropriate circumstances be limited to a shorter period because of particular equities. *Mystic S.S. Co.* v. *Stromland*, 20 F.2d 342 (4th Cir., 1927); *Mavromatis* v. *United Greek Shipowners Corporation*, 179 F.2d 310 (1st Cir., 1949); *Foster* v. *Oro Navigation Company*, 128 F. Supp. 113 (S.D. N.Y., 1954), aff'd. 228 F.2d 319 (2nd Cir., 1955); *The Chester*, 25 F. 2d 908 (D. Md., 1928).

While in the above cases assessments for waiting were made from the beginning of the prescribed statutory period and discretion was exercised to shorten the period to some specified date before actual payment, there have also been cases where the limitation has been placed at the opposite end of the period of retention. In other words, in these cases the courts did not begin the double wage allowance until sometime beyond the date when payment of wages should have been made. *Swanson* v. *Torry*, 25 F.2d 835 (4th Cir., 1928); *Samad* v. *The Etivebank*, 134 F. Supp. 530 (E.D. Va., 1955); *Spero* v. *Steamship The Argodon*, 150 F. Supp. 1 (E.D. Va., 1957).

Certainly, *McCrea* v. *United States*, *supra*, holds that where some fault of the seaman furnishes justification for the initial failure to pay wages at the prescribed time, the shipowner is not to be held to the double wage liability even if the excuse for non-payment later becomes inapplicable. Moreover, the Supreme Court's opinion in *McCrea* indicates that even if facts other than the seaman's conduct

constitute a legally sufficient excuse for non-payment of wages at the time prescribed in the statute, normally no double wages will be imposed for a later period after the excuse ceases to exist. However, we do not think that the rule laid down in *McCrea* is as far-reaching as the shipowner's contention in the instant case. Fact situations may arise where the District Court finds the shipowner's conduct sufficiently inexcusable to render him liable for double wage penalties. However, equities not amounting to justification may be found to have existed when the wages fell due and which later became inapplicable. The District Court may in such circumstances properly postpone the running of double wages, confining them to the period after any equity supporting the shipowner's action has disappeared.

III. *Other Points Raised by the Shipowner*

The appellant's remaining claims of error require less extensive treatment. The shipowner also contests the awards for wages and waiting time on the ground that Firipis was paid in full for the voyage ending in a United States port in April, 1958, and that his claim for wages relates to a previous voyage ending at Bremen, Germany, in March, 1958. To support its position that a separate voyage began from Bremen on March 13, 1958, the shipowner points to the new articles signed after the ship left Bremen. It is asserted that any failure to pay wages occurred on March 13 in a foreign port, and because of this, no suit will lie in under the American law for such wages.

It is not clear whether the voyage from Bremen to Norfolk was considered a separate voyage or not. Where the ship had been immediately prior to its arrival in Bremen,

or what the previous articles contemplated is not revealed by the record. It is clear, however, that Firipis signed a one year employment contract in April, 1957, and that under it wages were due. Whether the period for which they were due was a separate voyage, thereby having rendered the shipowner liable in Bremen on March 13, need not be decided. Under circumstances such as these, it has been expressly held that such past wages from a previous voyage, plus double wages, may be the subject of suit in this country after the ship reaches an American port. *Mavromatis* v. *United Greek Shipowners Corporation*, 179 F.2d 310, 317, 319 (1st Cir., 1949). See also *Korthinos* v. *Niarchos*, 175 F.2d 730 (4th Cir. 1949).

The shipowner attacks the District Court's finding of fact that oil on the deck caused the libellant's fall, asserting that in arriving at this finding, the District Court made improper inferences. In its opinion, the District Court pointed out that only one officer and one seaman were called as witnesses by the shipowner, although there were several other members of the crew in the area at the time of the injury. The court, after discussing this aspect in detail, said: "The unexplained failure to call material witnesses raises an inference that such witnesses, if permitted to testify, would not support the defense as advanced by respondents." We think that such an inference, in the circumstances of this case, was not unjustified. See *The New York*, 175 U.S. 187, 204 (1899).[3] It is also argued that the District Court drew an inference from the shipowner's

[3] The shipowner relies upon *Pacific-Atlantic S.S. Co.* v. *United States*, 175 F.2d 632 (4th Cir., 1949), but that case is not in point, as there, only two out of dozens of witnesses were not called. This court recognized that in those circumstances, the general rule permitting an inference from the failure to call witnesses was not applicable.

refusal to pay maintenance that oil on the deck caused the libellant to fall. Of course, such a bald inference would be illogical, but we do not think that the court intended any such thing. After reviewing the relevant evidence, the court did refer to the shipowner's failure to pay maintenance. This was, perhaps, a factor the court took into consideration as bearing upon the credibility of the shipowner's theory. However, the finding of fact that oil upon the deck caused the fall was supported by direct testimony and is not clearly erroneous. The mere recital in the District Court's opinion that the shipowner failed to pay maintenance at a time when the libellant was not yet cured is not sufficient to upset the court's finding of fact as to the cause of the injury.

The appellant complains of the District Court's final decree requiring deposit of earned wages and double wages in the registry of the court in order to stop the running of double pay pending appeal. It is argued that under *Pacific Mail S.S. Co.* v. *Schmidt*, 241 U.S. 245 (1916), penalties can *never* run beyond the date of the District Court's decree. Of course, the language of the statute indicates that penalties run until actual payment, whenever it might be. However, as we pointed out previously, the *Pacific Mail* case held that particular circumstances might make it appropriate to shorten the period. That case did not hold that liability for waiting time always stops with the trial court's decree.[6] We need not decide here whether double wages could have been imposed pending appeal, as the order of the District Court limited the shipowner's liability to the date of the decree and furnishes it no proper ground

[6] In fact, the Court in *Pacific Mail* expressly refrained from ruling upon this question, 241 U.S. at page 251.

for complaint. It would seem to be no abuse of discretion to require such payment into court, thereby protecting the shipowner against increased liability and insuring payment to the seaman.

Finally, it is asserted that the court erroneously refused to consider a letter that Hasler & Company, the shipowner's Norfolk agent, sent to the shipowner in New York, after paying the libellant his wages for the period from March 13, 1958, to April 1, 1958, stating that the libellant had been paid in full. In the first place, there is no evidence that the court refused to consider this letter. In fact, it might have been because of such letter that the District Court postponed the running of double wages. Moreover, this letter of the Norfolk agent constitutes no justification for failing to pay the wages due for a period prior to the ship's departure from Bremen on March 13, 1958. The appellant advances no reasons why the mere assertion by a ship's local port agent, who enters the case later, excuses an otherwise unjustified failure to pay a seaman's wages. Something more would have to be shown.

For the above reasons, the decree of the District Court is

Affirmed.

Respondent's Exhibit No. 4

April 15, 1958

Messrs. Vandeventer, Black & Meredith, Attorneys at Law
Citizens Bank Building
Norfolk, Virginia

Attn: Mr. Walter Martin

Gentlemen:

S. S. "MARGARITIS"

We confirm telephone conversation of even date, and, as per your request, attach hereto Citation In Admiralty No. 7946, filed in the United States District Court for the Eastern District of Virginia, which is served on us by Mr. Kelsey and Mr. Babalas on behalf of Mr. GEORGIOS FIRIPIS, who was placed in the hospital with an injured hand on April 2, 1958.

For your guidance, this seaman was paid his full wages on April 2, 1958.

As this vessel, according to the Owners, is represented in the U. K. Club, we trust that this Citation will have your close attention, and ask that as soon as you have the attached photostated you will return same to us for our file.

Very truly yours,
R. T. Hasler, Jr.

RTHJr/ef

cc: Eastern Steamship Agency, Inc.
New York, New York

LIBELLANTS PROCTOR INTRODUCES LIBELLANTS INTERROGATORIES AND RESPONDENTS ANSWERS THERETO:

Mr. Kelsey:

We introduce all of the libellant's interrogatories and all of the answers to libellant's interrogatories, every one of them. Every one of them are pertinent.

* * * *

CERTAIN OF LIBELLANTS INTERROGATORIES AND RESPONDENTS ANSWERS THERETO:

1. Q. "State the date of incorporation and under what state of the United States said respondent Southern Cross Steamship Company, Inc., is incorporated?

A. "The Southern Cross Steamship Company, Inc., is a Liberian Corporation, incorporated on December 3, 1953."

2. Q. State the address of the principal office of said Southern Cross Steamship Company, Incorporated together with the address of any other such offices of said respondent."

A. "80 Borad Street, Monrovia, Liberia."

6. Q. "State whether or not respondent Southern Cross Steamship Company, Incorporated, directly issued orders or instructions with reference to the management, operation, control and sailing destinations of the SS MARGARITIS."

A. "Southern Cross Steamship Co., Inc., issues orders directly for the operatoin, etc., of the SS MARGARITIS."

Title 46 USCA 596:

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shlal be recoverable as wages in any claim before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts . . ."

"ROL DE LA TRIPULACION" Y CONTRATA DE ENGANCHE

"CREW LIST" AND ARTICLES OF AGREEMENT

La Ley Organica de la Marina Mercante Nacional de la República de Honduras dice:

Título VIII.—Artículo 29: El Capitán y demás oficiales de los navíos mercantes nacionales que desempeñen cargo técnico o profesional, deberán portar un CERTIFICADO DE IDONEIDAD que los habilite para desempeñar tal cargo . . . . .

Título IX.—Artículo 24: . . . . . EL "ROL DE LA TRIPULACION" expresará los términos y condiciones del enganche . . . . .

Artículo 25: EL "ROL DE LA TRIPULACION" deberá ser firmado por el Capitán y todos los miembros de la Tripulación antes de hacerse la nave la mar . . . . .

Artículo 26: EL "ROL DE LA TRIPULACION" y las adiciones hechas al mismo deberán ser vistos por el Comandante del Puerto Hondureño de enganche o por los Cónsules de la República en el enganche se haga en puerto extranjero . . . . .

Artículo 29: Los términos de enganche, condiciones de trabajo, y los derechos y obligaciones que ambas partes contratantes libremente convengan y que consten expresamente en el Rol de la Tripulación serán de forzoso cumplimiento . . . . .

Título XII.—Artículo 57: Todo tripulante de nave mercante nacional mayor de cien toneladas, tendrá la obligación de obtener y portar consigo un LIBRETA DE IDENTIFICACION que lo habilitará para trabajar en las referidas naves mercantes . . . . .

Título XIII.—Artículo 65: Las naves mercantes nacionales de tráfico internacional tendrán la obligación de traer abordo los siguientes documentos oficiales: 1 . . . . . 2 . . . . . 3—"ROL DE LA TRIPULACION" . . . . .

The Original Law of the National Merchant Marine of the Republic of Honduras says:

Title VIII.— Article 29: The Captain and other officers of National Merchant vessels who occupy a technical or professional post on board must have a CERTIFICATE OF CAPACITY which entitles them to occupy such a post.

Title IX.— Article 24: . . . . . The Articles of Agreement will express the terms and conditions of the enrollment . . . . .

Article 25: The Articles of Agreement must be signed by the Captain and all the crew before the vessel goes to sea . . . . .

Article 26: The Articles of Agreement and the additions made thereto must be visaed by the Commandant of the Honduran Port of Enrollment or by the Consuls of the Republic if the enrollment is made in a foreign port . . . . .

Article 29: The terms of the enrollment, work conditions and the rights and obligations which both contracting parties freely agree to, and which appear in the Articles of Agreement will be absolutely obligatory . . . . .

Title XII.— Article 57: Every member of the crew of a national merchant vessel of over 100 tons will have the obligation of obtaining and carrying with him his IDENTIFICATION BOOK which will habilitate him to work on the aforesaid national vessels.

Title XIII.— Article 65: National merchant vessels engaged in foreign traffic will be required to have on board the following documents: 1 . . . . . 2 . . . . . 3 Articles of Agreement . . . .

CONTRATA DE ENGANCHE

(Articles of Agreement)

ENTRE EL CAPITAN Y TRIPULACION AL SERVICIO DE LA MARINA MERCANTE DE LA REPUBLICA DE HONDURAS

(Between Master and Seamen in the service of the Merchant Marine of the Republic of Honduras)

Oficina del CONSULADO de la Republica de Honduras en el Puerto de NEW YORK

Office of the of the Republic of Honduras at the Port of

a los días del mes de , 19

this days of the month of , 19

QUEDA CONVENIDO ENTRE EL CAPITAN Y LA TRIPULACION DEL

It is agreed between the Master and the Seamen of the

DEL CUAL ES CAPITAN Y QUE SALE RUMBO HACIA

of which is Master now bound for

O CUALQUIER OTRO PUERTO O LUGAR DEL MUNDO QUE EL CAPITAN ORDENARE, Y DE REGRESO A

or any part of the world as the master may direct, and back to

PUERTO FINAL DE DESCARGA Y POR UN TERMINO QUE NO EXCEDA DE MESES, QUE:

final Port of discharge, for a term not exceeding months, that:

1. Adjudicaciones serán hechas solamente a favor de las siguientes personas: esposa, hijos, padres, hermanos, hermanas, abuelos, nietos, sobrinos, o sobrinas, cuando sean debidamente aprobadas por la Autoridad respectiva, y deberán ser insertadas en el Libro de Adjudicaciones antes de comenzar el viaje.

2. No se hará avalanzas a la Tripulación antes del tiempo en que hayan actualmente sido devengados.

3. No se permitirán armas peligrosas ni bebidas alcohólicas en poder de la Tripulación.

4. La Tripulación podrá ser transferida a cualquiera otra embarcación operada por la misma compañía bajo las mismas condiciones de este contrato.

5. La Tripulación trabajará el día de la llegada a puerto hasta las cinco de la tarde.

6. La Tripulación trabajará en la carga y el lastre si así lo requiere el Capitán.

7. La tripulación no podrá desembarcar en puerto extranjero sin permiso del Capitán.

8. Cualquier miembro de la tripulación que no se presente abordo a la hora ordenada el día de la salida, o se presente en estado de embriaguez, será despedido y su puesto ocupado por un substituto.

9. Queda expresamente convenido que los derechos y las obligaciones por daño, lesión, enfermedad o muerte que sobrevenga a cualquiera de las personas que firman este contrato, mientras la contrata esté en vigor y permanezcan abordo o al servicio de la nave, serán exclusivamente gobernados por las leyes de la República de Honduras aplicables al caso.

10. Queda convenido que en el caso de que el buque no emprenda el viaje convenido, debido a un acontecimiento imprevisto o por cualquier otro motivo, la tripulación podrá ser despedida, pagándosele los salarios devengados hasta la fecha, mas seis días de salario como compensación, o podrá ser transferida en condiciones iguales a las de este contrato a cualquier otro buque de la misma compañía.

11. El algún miembro de la tripulación se dedicare al contrabando o a otra operación ilícita que ocasionare pérdidas, perjuicios o gastos al armador o a la nave, además de incurrir las sanciones legales correspondientes, pagará al armador o a la nave el importe de tales pérdidas daños o gastos.

12. Cualquiera disputa que se suscite entre el "Capitán, o el Armador y miembros de la tripulación relativa a las especificaciones de esta contrata será dirimida y resuelta por las autoridades competentes de la República de Honduras.

13. Cualquier miembro de la tripulación que sin licencia se ausentare del barco, estará sujeto a una multa equivalente a dos días de salario por cada día o fracción de día que esté ausente, y a las demás medidas disciplinarias de ley.

14. La Tripulación renuncia a que el Capitán lea los artículos de la LEY ORGANICA DE LA MARINA MERCANTE NACIONAL DE LA REPUBLICA DE HONDURAS.

15. Queda también convenido que están incluidos en esta contrata los preceptos del Artículo 53 de la LEY ORGANICA DE LA MARINA MERCANTE NACIONAL de la República de Honduras que dice: "Los derechos y compensaciones concedidos en esta ley a la gente de mar que compone la dotación de las naves mercantes nacionales, sustituyen y excluyen cualesquiera otros derechos, privilegios, compensaciones, indemnizaciones o acciones que puedan demandarse del patrono o de la misma nave, por causa de la enfermedad lesión o muerte del tripulante, y ni el patrono ni la nave responderán, ni será obligado a pagar bajo otras leyes de la República, o del país de nacionalidad de la víctima, o de cualquier otro país, otros daños, compensaciones o indemnizaciones por dichas causas que las establecidas expresamente en esta ley. El patrono hará constar el texto de este artículo en el "Rol de la Tripulación" como parte integrante y condición del contrato de enganche de la tripulación."

16. La tripulación igualmente se compromete a conducirse de manera ordenada, fiel, honesta, sobria y diligente en el cumplimiento de sus deberes; obediente a las órdenes, reglamentos e instrucciones del Capitán o de quien legalmente lo reemplace, y de los oficiales superiores, en todo lo concerniente al barco, su provisiones y carga ya sea abordo, en los botes o en tierra; y en consideración de esos servicios, dicho Capitán por la presente convienen en pagar a dicha tripulación, como salario las cantidades que aparecen al lado opuesto de sus respectivos nombres. Queda también convenido por la presente que cualquiera omisión o destrucción intencionada o negligente de la carga o provisiones del buque, deberá ser recompensada al dueño

1. Allotments will be made only to the following persons: wife, children, parents, brothers, sisters, grandparents, grandchildren, nephews or nieces, when duly approved by the respective Authority of the Republic of Honduras and inserted in the Allotment Book before the commencement of the voyage.

2. No advances are to be made to seamen before the time they have been actually earned.

3. No dangerous weapons or alcoholic beverages will be allowed in possession of the crew.

4. The crew may be transferred to any other vessel operated by the same company under the same conditions of this contract.

5. The crew will work on the day of arrival in port of final discharge until 5 o'clock P. M.

6. Crew will work cargo and ballast if required by the Master.

7. The crew will not go ashore in any foreign port except by permission of the Master.

8. Any member of the crew failing to report for duty at the designated hour on sailing day, or who reports intoxicated, will be discharged and his place occupied by a substitute.

9. It is expressly agreed that the rights and obligations arising from injury, illness, illness or death which occurs to any of the persons signing this contract, whilst the contract is in force, and they remain on board or in the service of the vessel, will be exclusively governed by the laws of the Republic of Honduras.

10. It is agreed that in the event the vessel does not proceed on the agreed voyage, due to an unforeseen event, or for any other motive, the crew may be discharged upon payment of earned wages, plus seven days wages as compensation, or may be transferred in conditions equal to those of this contract to any other ship of the same company.

11. If any member of the crew engages in smuggling or in any other illicit operation, causing losses, damages or expenses to the owner or to the ship, he also incurring the corresponding legal sanctions, he will pay to the owner or to the ship the sum of such losses, damages or expenses.

12. Any dispute arising between the Captain, or the owner and members of the crew relative to the specifications of this contract will be submitted to and determined by the competent authorities of the Republic of Honduras.

13. Any member of the crew found to be absent from the ship without leave, will be subject to a fine of two days pay for each day or part of a day he is absent, and to other legal disciplinary measures.

14. The crew waives the reading to them, by the Master, of the articles of the Organic Law of the National Merchant Marine of the Republic of Honduras.

15. It is also agreed that there are included in this contract the precepts of Article 53 of the ORGANIC LAW OF THE NATIONAL MERCHANT MARINE of the Republic of Honduras which says: "The rights and compensations granted in this law to seamen who make up the crews of national merchant ships substitute and exclude any other rights, persons compensations, indemnities or actions that could be required from the employer or from the ship by reason of the illness, injury or death of the crew, and neither the employer nor the ship will respond nor may be obligated to pay under other laws of the Republic or of the country of the victim, or of any other country, other damages, compensations or indemnities for said causes than those expressly established in this law. The employer will make appear on the crew list the text of this Article as an integral part and condition of the contract of enrollment of the crew."

16. The crew likewise agrees to conduct themselves in an orderly, faithful, honest and sober manner, in the fulfillment of their duties; obedient to the orders, regulations and instructions of the Captain or whoever legally replaces him, and of the superior officers in all that which concerns the ship, its stores and cargo, whether on board, in boats or on shore; and in consideration of such services, said Captain by these presents, agrees to pay to said crew, as wages, the amounts appearing opposite their respective names. It is likewise agreed by these presents that any embezzlement or willful or negligent destruction of the ship's cargo or stores shall be made good to the owner out of the wages of t

FIRMA OFFICIAL (Official's Signature)	FECHA DEL DESEMBARCHE (Date of Signing Off)	LUGAR DE DESEMBARCHE (Final Discharge)		BALANCE		FIRMA OFFICIAL (Official's Signature)	
		LUGAR (Place)	FECHA (Date)		FINAL RELEASE		
		Norfolk VA	1 H '58				Lafferty Hospital